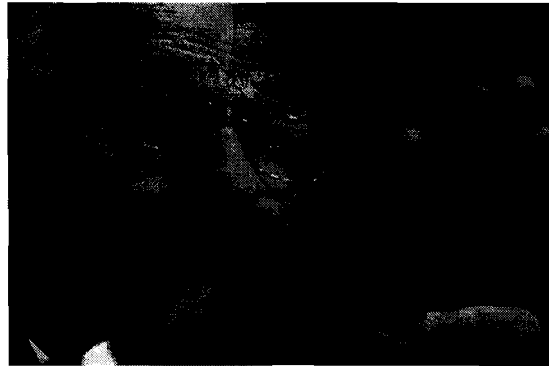


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## Way back when, Joe Main thought MSHA should hold public hearings on mine disasters

May 7, 2010 by Ken Ward Jr.



This morning, I happened to be re-reading the United Mine Workers of America's investigation report on the 2001 disaster at the Jim Walter Resources No. 5 Mine in Brookwood, Ala.

Back then, my friend Joe Main was director of health and safety for the UMWA. Today, of course, he's assistant labor secretary in charge of the U.S. Mine Safety and Health Administration.

And my how times have changed ...

Yesterday, Main and his boss, Labor Secretary Hilda Solis announced that they would continue the MSHA trend and hold one of the key parts of its Upper Big Branch Mine Disaster investigation behind closed doors.

As we reported, MSHA plans a series of various "public hearings", "forums" and comment periods. But the meat of the investigation process (aside from the part conducted underground) will be held in secret. MSHA hasn't even committed to releasing transcripts of its interviews, only "the contents" of those interviews — does that mean summaries or transcripts?

But in his report for the UMWA on the Brookwood disaster, Joe Main had this to say about the transparency of mine disaster investigations:

*When Congress created the Federal Mine Safety and Health Act (Mine Act), it placed on MSHA the responsibility to conduct thorough investigations of mining accidents. Section 103 of the Mine Act describes the powers vested with the Agency to conduct public hearings in the investigation of any accident. It also provides tools for the Agency to obtain testimony of witnesses, documents, records and other information necessary to investigate mining accidents. The UMWA believes that Congress intended MSHA's investigations to constitute a public accounting, not a secretive process.*

The report also said that in future investigations:

*MSHA should construct the hearing/interview process to be more open. It would be in the best interests of improved mine health and safety to have witnesses provide information in the public light rather than in the confidential manner. (If a witness is only willing to testify in confidence of his or her own will — that should of course be respected.)*

And:

*To avoid the self-investigation dilemma and the appearance of cover-up, the Agency should provide for testimony from MSHA employees in a public setting. Miners and their representatives need to be involved in that process. Asking questions of all those involved in mine safety is essential to a comprehensive process.*

Joe Main's old organization, the UMWA, has announced it plans to sue MSHA over the agency's plan to hold closed-door interviews, with union President Cecil Roberts saying yesterday:

*The interview process is perhaps the most critical step in the entire investigation. That is where those with fresh, first-hand knowledge of what the conditions were in the mine will be asked to tell investigators what they know. But without subpoena power, MSHA has no ability to compel anyone to participate in an interview.*

*And, MSHA will be the one asking the questions. But what if they don't ask all the questions that need to be asked? What if they don't call everyone who needs to be called?*


Some families of miners killed at Upper Big Branch area also terribly upset at MSHA's plan. Rachel Hanna Moreland, attorney for the family of miners William "Bob" Griffith and Ronald Lee Maynor, said last night:

*MSHA's closed door interviews are unfair to the families. It would seem MSHA gives only lip-service to miners' families concerns. The families are the biggest stakeholders here and have lost the most. Nonetheless, MSHA excludes them from the process. At the meeting last night the families asked to have a family representative present for witness conferences. MSHA responded with a flat no and offered no explanation for its refusal. The families should have access to solid information on a daily basis instead of suffering through months of rumors and trickled down information. MSHA's press release does not indicate how or when it will disseminate information to the families during the fact gathering phase.*



This entry was posted on Friday, May 7, 2010 at 1:01 pm and is filed under Mine Safety, Upper Big Branch Disaster. You can follow any responses to this entry through the RSS 2.0 feed. You can leave a response, or trackback from your own site.

### 7 Responses to "Way back when, Joe Main thought MSHA should hold public hearings on mine disasters"

1.  Thomas Rodd says:  
May 7, 2010 at 1:39 pm

A quick look on the Internet shows (I think) that Oliver North's criminal conviction was overturned because he had been granted limited or "use immunity" for his testimony. In other words, North was not given blanket immunity for what he admitted to doing, when he testified before Congress — but, what he testified to could not be used in any fashion to prove anything against him. A court later determined that the immunized testimony was used by witnesses and/or investigators in his criminal prosecution.

This suggests that unless MSHA explicitly grants some kind of immunity to a witness in a UBB investigation, the witness' testimony in the investigation will not prohibit their criminal prosecution.

MSHA could subpoena a number of the people who know about what happened at UBB to a public hearing, ask the tough questions, and then the public can watch in the sunshine and evaluate both the questioners and the questioned. People who don't want to testify can refuse to answer questions and take the Fifth Amendment. There's no penalty for that. Let's start the hearings with "Bloody Don" Blankenship! (I know, I'm dreaming.)


It's great that the UMWA is pushing for an investigation process that is conducted in the sunshine. Joe Main is not looking strong here. If he's going to stick to this secretiveness, he needs to be far more forthcoming and persuasive about why he (and his lawyers) think that's necessary. Given the NOLiver North example, the "jeopardizing a criminal investigation" line looks like it might be weak. Explain yourself, Mr. Main!

Bottom line: so far, many people are not convinced that this is being handled properly, and the closed MSHA investigative proceedings continue to feed a growing belief in a cover-up of MSHA incompetence, or worse.

The miners' memories and their families deserve better.

2.  Jade says:  
May 7, 2010 at 3:05 pm

Ken, thank you so much for your continuing coverage, from hazard to regulation, regulatory failure to disaster, grief to investigatory tactics. The nation owes you a lot for your wonderful work.


3.  clay ton says:  
May 7, 2010 at 4:30 pm

What are the names of the MSHA attorneys that are giving Mr. Main his instructions. This would be the beginnings of transparency.

re: Rachel Hanna Moreland, attorney "At the meeting last night the families asked to have a family representative present for witness conferences. MSHA responded with a flat no and offered no explanation for its refusal."


The public is not accustomed to legal procedure of which the hearings are a part of. If the government has attorneys present or a part of the investigation conferences then those being interviewed should have equal access to counsel.

Is the UBB investigation also going to be a test of Constitutional Law?

4.  floyd campbell says:

May 7, 2010 at 4:49 pm

I guess its business as usual for msha, and I am very disappointed with Mr. Maintestified with him against the proposed change to the dust standards< and I remember him saying that the only reason that msha exists is to protect the safety of the miners. It seems to me that Joe has forgotten this.I

5.  T. Farrish says:  
May 7, 2010 at 11:17 pm

As a lifelong West Virginia resident and someone with relatives and friends who work in the mines (my grandfather was killed mining coal), I share the grief of those miners and their families. We all want answers.

As to the criticism of Joe Main, apparently Ken Ward (who is a very good reporter) failed to mention Mr. Main's statement just yesterday. I quote from the statement released yesterday on MSHA's web-site for the world to see:


It says that MSHA will hold (and I quote from the web site):

"A public hearing in which miners, contractors, mine officials and others with knowledge of the workings of the mine are asked to testify. MSHA will use its subpoena power if necessary." The statement says that other public hearings will take place as well.

In regard to the public hearings, MSHA's web site quotes Joe Main directly: "This approach is being driven by a commitment to learn what caused the explosion that claimed 29 miners' lives, a commitment to transparency and openness, and a commitment to ensure that MSHA's investigation does not impede any potential or ongoing criminal investigations into the blast,"END  
QUOTE.


Why didn't the Gazette balance the story with this information from the agency and include the statement from Joe Main which plainly exemplifies that he intends to maintain the integrity of the investigation, while responding to need to have transparency.

It's not some new idea to protect the integrity of an investigation. Sit back, watch, listen, and you may learn something. Wait for the story; don't try to create one.

6.  John A. Joslin ( Detroit ) says:  
May 9, 2010 at 2:56 pm

Since MSHA is a Federal agency and their investigative & enforcement procedures directly affects coal miners and coal mining families along with everybody else in the United States who depends on the mining of coal to go about their daily lives... how about if the local ACLU ( Charleston ) musters a legal team to take a good hard look at whether the due process rights of such people are being protected here ?

Arbitrary denial of counsel to witnesses and insistence on convening public business behind closed doors are only TWO glaring issues that need attention.

7.  Ken Ward Jr. says:  
May 10, 2010 at 9:28 am

T. Farrish,

You should read my blog and our paper before you start saying we didn't mention things ... we posted the entire MSHA statement, including Joe Main's comments to which you refer, here:

<http://blogs.wvgazette.com/coalatattoo/2010/05/06/msha-announcement-on-upper-big-branch-probe/>

Those quotes were also in our print edition story, which is available online here:

<http://wvgazette.com/News/montcoal/201005060800>

So on Coal Tattoo, we offered a balance approach by posting MSHA's statement and Joe Main's quotes in their entirety. And in the print edition, we included the entire quote that you suggested was needed to understand Joe Main's position.

Thanks in advance for your apology.

Ken.

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